UNITED NATIONS

General Assembly

FORTY-NINTH SESSION

Official Records

SIXTH COMMITTEE
35th meeting
held on
Wednesday, 16 November 1994
at 10.30 a.m.
New York

SUMMARY RECORD OF THE 35th MEETING

Chairman: Mr. MADEJ (Poland)
(Vice-Chairman)

CONTENTS

AGENDA ITEM 136: UNITED NATIONS DECADE OF INTERNATIONAL LAW (continued)

AGENDA ITEM 141: QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE (continued)

AGENDA ITEM 138: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SEVENTH SESSION (continued)

AGENDA ITEM 140: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/49/SR.35
9 December 1994
ENGLISH
ORIGINAL: SPANISH

94-82328 (E)

In the absence of Mr. Lamptey (Ghana), Mr. Madej (Poland), Vice-Chairman, took the Chair.

The meeting was called to order at 11 a.m.

AGENDA ITEM 136: UNITED NATIONS DECADE OF INTERNATIONAL LAW (continued) (A/49/323 and Add.1 and 2; A/C.6/49/L.10)

1. Mr. CALERO RODRIGUES (Brazil), speaking on behalf of the Rio Group, expressed appreciation to the Secretary-General for his valuable report (A/49/323 and Add.1 and 2) and to Mr. Martens for the efficient manner in which he had led the Working Group on the United Nations Decade of International Law. It was satisfying to note that the main objectives of the programme for the Decade were being fulfilled, namely, the promotion of the principles of international law, the enhancement of means and methods for the peaceful settlement of disputes between States and the encouragement of the study, dissemination and codification of international law; he stressed the importance of the preparations for the United Nations Congress on Public International Law, to be held in 1995.

2. His delegation wished to highlight the work of the following bodies: the Commission on Human Rights, for the elaboration of a draft declaration on the right and responsibility of individuals, groups and organs of society to protect human rights and fundamental freedoms; the Commission on the Status of Women, for its contribution to the elaboration of the Declaration on the Elimination of Violence against Women; and the International Committee of the Red Cross (ICRC), for having elaborated draft guidelines on the protection of the environment in times of armed conflict. Mention should also be made of the progress achieved by the Conference on Disarmament, the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, the United Nations Conference on Trade and Development and the Uruguay Round of Multilateral Trade Negotiations held under the auspices of the General Agreement on Tariffs and Trade (GATT), at which the Agreement establishing the Multilateral Trade Organization had been adopted.

3. The important progress achieved at the most recent session of the International Law Commission, the main United Nations body devoted to the development and codification of international law, must not be forgotten. All those activities demonstrated the fulfilment of the objectives of the Decade (1990-1999) in accordance with the provisions of General Assembly resolution 44/23. Accordingly, he reaffirmed the confidence of the countries members of the Rio Group in the activities carried out by the United Nations for the purpose of promoting international law.

4. Mr. MARTINI HERRERA (Guatemala), speaking on behalf of the Group of Central American States, said it was no accident that, in spelling out the purposes of the United Nations, the drafters of the Charter had given priority to the maintenance of international peace and security, since unless that purpose was achieved, the other objectives would remain unfulfilled. Without a minimum of peace, the rule of law was impossible - inter arma silent leges - and,

conversely, unless law was rendered minimally effective the only viable peace would probably be the result of arbitrary acts and intimidation. Accordingly, law could make a powerful contribution to the maintenance of peace. That explained the importance within the system of collective security established by the Charter of the role ascribed to the law governing relations between Members of the Organization, not only as a prerequisite for the maintenance of peace, but as a tool of cooperation between States.

5. The goal of the 1899 Peace Conference had been to seek more effective means of ensuring a genuine and lasting peace; however, if that goal was contrasted with the horrendous military conflicts of the current century, the historian who had described the twentieth century as a misprint in the book of history would seem to be right. However, the Decade of International Law being observed by the international community appeared to prove that historian wrong, it would demonstrate that the first Peace Conference had contained the seed of the subsequent triumph of jus ad bellum as the basis of peace between nations.

6. The activities, achievements and projects described in the report of the Secretary-General (A/49/323 and Add.1 and 2) constituted the best means of assessing the primary role of international law in peaceful relations between States. On the basis of that report, his delegation wished to make the following observations and suggestions.

7. The United Nations should, without slackening its efforts relating to the codification and progressive development of international law, strengthen and enhance what had already had been achieved in that sphere. Thus, an effort should be made to expand the participation by States in the multilateral treaties adopted under the auspices of the International Law Commission or other organs of the United Nations system, since complications ensued when a substantial number of States did not participate in a treaty which had been adopted. Two examples should be mentioned in that regard: first, although 25 years had elapsed since the adoption of the Vienna Convention on the Law of Treaties, less than half of the States Members of the United Nations participated in it; secondly, the number of States which had become parties to the Vienna Convention on Special Missions barely exceeded the minimum number required for its entry into force. Since participation in that Convention should be virtually universal, because the activities to which it referred were becoming increasingly common, it would seem appropriate to review the Convention in order to determine whether there were objective reasons for the scant support which it had received. In that connection, Spain's suggestion that the International Law Commission should carry out a review of conventions which had not entered into force despite a great deal of time having elapsed since their adoption seemed appropriate. Another prominent example was that of the Vienna Convention on Succession of States in respect of Treaties, in which only 14 States participated; that raised the additional difficulty, in respect of some rules contained in that Convention, of whether or not such rules formed part of customary law, a problem that would not have arisen if the Convention had not been adopted. Lastly, the number of States participating in the Optional Protocols to the Vienna Conventions on Diplomatic and Consular Relations was also small.

8. He suggested the following ways of promoting wider participation in the multilateral treaties in question: first, in his 1994 report on the work of the Organization, the Secretary-General had indicated that the Centre for Human Rights was encouraging ratification of human rights instruments; in Brazil's view, for multilateral treaties of a general nature, the same function could be performed, mutatis mutandis, by the Office of Legal Affairs. Second, the United Nations could entrust an eminent person to conduct an inquiry into the reasons for the lack of acceptance of the instruments in question. Abstaining Governments could be asked to explain their apparent lack of interest, with the guarantee, naturally, of total confidentiality. The relevant report would indicate whether such abstention had been due solely to apathy, or to bureaucratic inertia, the excessive workload of the legislative authorities, failure to appreciate the advantages offered by a given treaty or the unacceptable nature of certain of its provisions. All that information could lead to a revision of a particular treaty. Third, the Secretary-General could be asked to submit information on a periodic basis to the Sixth Committee on the number of States which had acceded to the instruments in question.

9. With regard to the Model Rules on Arbitral Procedure adopted by the International Law Commission in 1958, a study should perhaps be conducted into the standard procedures followed by arbitral tribunals, an area about which little was known because those tribunals tended to be very reticent in that regard. The rules should also be compared with the model rules on arbitration recently adopted by the Permanent Court of Arbitration, with a view to harmonizing the two series of model rules.

10. His delegation was surprised that neither the Organization of African Unity (OAU) nor the Organization of American States (OAS) had made suggestions regarding the programme of the Decade, particularly since the Inter-American Juridical Committee, an OAS body, was in a position to contribute significantly to the teaching, study, dissemination and wider appreciation of international law. He hoped that, in future, both organizations would participate with energy and enthusiasm in the Decade's activities.

11. He supported Japan's suggestion regarding the updating of such useful Secretariat publications as the Repertory of Practice of United Nations Organs and the Repertory of Practice of the Security Council. He also supported Austria's observation that closer consideration should be given to proposals on strengthening the role of the International Court of Justice and, in particular, on giving the Secretary-General the right to request advisory opinions from the Court. He also endorsed Australia's suggestion that a study should be conducted into the working methods of the International Court of Justice. It would be relatively easy, on the basis of the Yearbooks published by the Court on its practice during that year, to compile a compendium of all the relevant information.

12. In 1990, the prominent Argentine jurist José María Ruda, then President of the International Court of Justice, wrote a letter to the Secretary-General (A/45/430) referring to a procedure, provided for in certain international treaties, for the sui generis settlement of disputes. Under that procedure,

when a dispute arose between a State party and an international organization which was also a party to the treaty, an advisory opinion had to be obtained from the Court which, under the treaty, was binding on the parties. One of the current jurists on the Court had pointed out the anomalous nature of that procedure and had come out in favour of amending the Statute of the Court to enable it to take cognizance, in legal action, of disputes between States and international organizations, a position recently corroborated with the Sixth Committee by the current President of the Court. In Brazil's view, consideration should be given - with all the circumspection necessary in the revision of an instrument as venerable as the Statute of the Court - to granting to international organizations locus standi in judicio with the Court, and he welcomed the establishment by the Court of a special tribunal for the settlement of disputes relating to the environment.

13. Consideration should be given to Argentina's suggestion that a commemorative stamp should be issued to raise funds to finance projects to be carried out in the Decade and to the preparation by both the United Nations and the Member States of the issue in 1999 of stamps to commemorate the first International Peace Conference.

14. After studying with interest the information contained in the Secretary-General's report on the establishment in various countries of national committees for the United Nations Decade of International Law, his delegation regretted that so few countries had taken such an initiative. Those committees could carry out the important function of encouraging the competent national bodies, including legislative organs, to take the necessary measures for the participation of their countries in multilateral treaties adopted under the auspices of the United Nations.

15. He also believed that support should be given to the work of the Institute of International Law described in paragraph 58 of document A/49/323, in particular its study of the settlement through the courts and through arbitration of disputes involving more than two States. Finally, he supported the suggestion by various States that the Sixth Committee should resume the function of providing legal advisory assistance to the other Committees of the General Assembly. That would be particularly desirable and useful when another Committee had before it a proposal on the creation of an international mechanism within the United Nations, such as the subsidiary working bodies established by the General Assembly.

16. Mr. MARTENS (Germany), speaking on behalf of the European Union and Austria, said that, as was evident from the Secretary-General's report on the United Nations Decade of International Law (A/49/323), specific measures had been adopted across the world to strengthen public international law. Outstanding among them was the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, an instrument which would ensure that the Convention enjoyed widespread acceptance and support when it entered into force on 16 November 1994. In addition, he drew attention to the adoption by the Conference on Security and Cooperation in Europe (CSCE) of modifications to

the 1992 Convention on Conciliation and Arbitration within CSCE, designed to strengthen the commitment by States participating in CSCE to settle disputes exclusively by peaceful means. In addition, the Council of Europe and Switzerland had launched a pilot project concerning State practice relating to State succession and recognition.

17. With regard to the protection of the environment in times of armed conflict, the International Committee of the Red Cross (ICRC) had elaborated a new version of the guidelines for military manuals and instructions, taking into account the remarks made by States with regard to the previous text. The European Union and Austria invited all States to consider incorporating the guidelines on the protection of the environment in times of armed conflict into their military manuals and encouraged ICRC to report to the Secretary-General on actions undertaken to promote the widest possible dissemination of the guidelines and on its cooperation with other organizations in that area.

18. In his view, the United Nations Congress on Public International Law, scheduled for early 1995 in New York, should have a flexible format. To that end, working groups could be established, thus enabling more legal experts to participate in their personal capacity and avoiding duplication of the work of the Sixth Committee. To that same end, the Congress should not adopt any decisions, recommendations or conclusions.

19. Mr. WIRANA (Indonesia) said that in view of the positive political climate and the evolving international situation there were new prospects for promoting the development and observance of international law. It was undeniable that respect for international law was the foundation for world peace and security. For that reason the Heads of State or Government of the Movement of Non-Aligned Countries had endorsed the initiative of the United Nations General Assembly to proclaim the period 1990-1999 the United Nations Decade of International Law.

20. The Decade should give impetus to States to consider ratifying or acceding to multilateral conventions. In particular, his delegation trusted that the United Nations Convention on the Law of the Sea, which had entered into force on 16 November 1994, would receive universal ratification as early as possible. It was an innovative instrument, heralding a new era for an effective and beneficial partnership between nations in harnessing ocean resources, the common heritage of mankind. With regard to the protection and preservation of the environment, the programme of the Decade should promote international cooperation, as stated in the Rio Declaration on Environment and Development, which reaffirmed the principle of the sovereign rights of States to use their own natural resources and the right of development for States and peoples.

21. The dissemination of international law was vital so as to ensure that it was known and applied globally. To achieve that goal there should be an expansion in the activities of the Advisory Committee for the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law. Cooperation between institutions at the university level in both developed and developing countries in the field of international law should also be encouraged. He noted that The Hague Academy of

International Law would hold a course on the subject in 1995 and would award postgraduate scholarships to six jurists from developing countries every year.

22. The United Nations Congress on Public International Law, to be held in New York in March 1995, would enable Member States of the United Nations to discuss ways and means of enhancing international law in a new and just world order. As a developing and non-aligned country, Indonesia felt that multilateral cooperation was an inescapable expression of the concept of shared responsibility, particularly with regard to disarmament and the maintenance of international peace and security. In an interdependent world the rule of international law should be based on respect for the sovereignty and territorial integrity of States irrespective of differences in their political and social systems, on non-interference in the internal affairs of other nations and on the promotion of the fundamental rights and freedoms of individuals and of countries. Since peace and stability were dependent on socio-economic and political factors, the strengthening of various organs of the United Nations would enhance the effectiveness of its actions, particularly in the economic, environmental and technological fields.

23. Mr. SUCHARIPA (Austria) said that the teaching and progressive development of international law traditionally received a high level of attention in Austria. International law was a compulsory part of the curriculum at Austrian law faculties, and the Legal Advisor's Office in the Ministry of Foreign Affairs, under Austrian constitutional law, watched over the observance of public international law within the Government.

24. Halfway through the Decade of International Law, his Government appreciated the achievements that had been made, but believed that considerable efforts still needed to be invested if the Decade was to be called a success.

25. For the upcoming United Nations Congress on Public International Law, the Secretariat had undertaken to prepare a programme appropriate to the time available, in order to provide equitable representation for the various regions and legal systems of the world. Its efforts to ensure the widest possible participation in the discussions should not, however, be artificially limited, and it should therefore duly consider suggestions that had been made as to limiting speaking time and distributing lectures beforehand. His delegation welcomed the Secretariat's suggestions with regard to making use of the time available outside the officially scheduled hours of the Congress. Indeed, the Congress should be not only a meeting of prominent contributors, but an opportunity for a large group of international lawyers to exchange ideas informally concerning the progressive development of the teaching and dissemination of international law.

26. The efforts of the International Committee of the Red Cross (ICRC) in elaborating the revised guidelines for military manuals and instructions on the protection of the environment in times of armed conflict were commendable. Although efforts to protect the environment in times of armed conflict were not new, the terrible and tragic pictures of recent armed conflicts had contributed to developing the international public awareness with regard to the often

irreparable environmental damage caused by the excessive use of particularly destructive weaponry.

27. International law had to play a paramount role in tackling the complex problems of sustainable development. For that reason Austria had organized, as its contribution to the preparatory process for the second session of the Commission on Sustainable Development, an international symposium entitled "Sustainable Development and International Law". The report of the symposium (E/CN.17/1994/16) contained several recommendations: that the evolution and development of international law and sustainable development should be enhanced; that the progressive development and codification of international law should lay more emphasis on the use of non-binding instruments, given their increasing importance; that international environmental treaties should, in order to ensure their full contribution to sustainable development, make use of oversight mechanisms based on incentives rather than on sanctions; and that on matters of sustainable development dispute, avoidance mechanisms should be given preference over dispute settlement. Several of those recommendations were reflected in the decisions adopted by the Commission on Sustainable Development.

28. Mr. MOLDE (Denmark), speaking on behalf of the Nordic countries, said that at the mid-point of the Decade of International Law the awareness of the role that international law could play in furthering the common task of establishing an international order based on the rule of law had increased. A wealth of information about the status and development of international law had been gathered, analysed and disseminated, laying the groundwork for the more operational activities that should be considered. Although the world community was not short of primary rules stipulating the main obligations of States in their mutual relations, there was a lack of a more effective system to implement those rules and to secure the responsibility of States and individuals who had violated them. "Implementation" and "responsibility" might be the key concepts on which to focus attention during the remaining period of the decade.

29. The International Law Commission and the Sixth Committee had long had under consideration two important items, namely State responsibility and the draft Code of Crimes against the Peace and Security of Mankind, including the question of the statute for an international criminal court, the final draft of which the Commission had presented at the current session. It would be a major contribution to the codification and progressive development of international law if conventions in those areas could be finalized and adopted during the remaining period of the Decade.

30. The Nordic countries, aware of the various proposals on how to mark the centenary of the first International Peace Conference, held at The Hague in 1899, looked forward to participating in the United Nations Congress on Public International Law, with its theme "Towards the twenty-first century: International law as a language for international relations", which could be an excellent occasion to register the trends in the thinking of representatives of the world's legal community with regard to the aims of the second half of the Decade.

31. With regard to other matters included in the programme for the Decade, the Nordic countries appreciated the contribution made by the International Committee of the Red Cross (ICRC), concerning the guidelines governing protection of the environment in times of armed conflict and ways and means of ensuring that the relevant rules were disseminated and observed, in particular by armed forces. In that regard, the guidelines for military manuals and instructions drawn up by ICRC should be given wide dissemination and incorporated in national military manuals and should be annexed to the resolution on the United Nations Decade of International Law to be adopted at the current session. It would also be valuable if ICRC were to call a meeting of governmental experts to discuss ways of promoting protection of the environment.

AGENDA ITEM 141: QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE (continued) (A/C.6/49/L.9)

32. The CHAIRMAN put to the vote the draft resolution contained in document A/C.6/49/L.9 and said that, if he heard no objection, he would take it that the Committee wished to adopt the resolution without a vote.

33. Draft resolution A/C.6/49/L.9 was adopted.

34. Mr. YAMAMOTO (Japan) said that, while Japan had joined the consensus adoption of the resolution, he wished to make some comments on article 10 of the Convention. In his view, the purpose of paragraph 4 of that article was to oblige a State party, when the alleged offender was present in its territory, to establish secondary jurisdiction to supplement the primary jurisdiction which was compulsory in accordance with paragraph 1 of the same article. On the other hand, under paragraph 2 of article 10, a State party was not obliged to establish jurisdiction, but was merely given the option of so doing. Consequently, Japan's interpretation was that in cases where no State party was obliged to establish jurisdiction in accordance with paragraph 1, but where States parties might choose to do so in accordance with paragraph 2, the obligation under paragraph 4 of article 10 would not be invoked.

35. Mr. SURIE (India) said that India was one of the countries that provided contingents for United Nations peace-keeping operations, and that it had participated in important operations such as those in the Congo, Mozambique and Cambodia. It took a particular interest in the welfare of the personnel participating in those operations, and would have preferred to have more time available in which to reach a consensus reflecting the views of all States regarding the Convention. He stressed the importance of international cooperation in application of the Convention, and said that the existing provisions actually applied in the various operations must not be overlooked.

36. Ms. FLORES (Mexico) said that from the outset Mexico had supported the negotiations on the elaboration of a convention on the safety of United Nations and associated personnel and that it had joined the consensus on the resolution adopted. Nevertheless, it felt that the new instrument suffered from some areas

of imprecision that might hamper its practical application, and it would have preferred that certain principles governing relations between States and peace-keeping operations were explicitly reflected in the text. A little more time devoted to the preparatory work might perhaps have resulted in a more legally rigorous text. She was confident that the instrument would be effective and that no serious problems would arise in the interpretation and practical application of its provisions.

37. Ms. COBO (Venezuela) said that her delegation had joined in the adoption by consensus of the draft Convention on the Safety of United Nations and Associated Personnel, which represented an important step in the protection of personnel involved in peace-keeping operations. However, it must be clearly understood that in every case it would be necessary to have the agreement of the host State and of the transit State, a condition that seemed not to be expressed sufficiently clearly in the text. She wished to reiterate her delegation's understanding that it was the national legislation of each State that would govern application of the Convention, particularly with regard to the prevention and punishment of attacks against United Nations personnel and the privileges and immunities to which they were entitled. Lastly, she said that her Government would be making the reservation permitted under article 22, paragraph 2, of the Convention, concerning the dispute settlement mechanism.

38. Ms. CUETO said that her delegation had joined in the adoption by consensus of the resolution urging States to sign and approve the Convention on the Safety of United Nations and Associated Personnel. However, she reserved the right to explain at the plenary meeting Cuba's reservations concerning the letter and spirit of the Convention.

39. Mr. ENAYAT (Islamic Republic of Iran) said that his country had joined in the adoption by consensus of the Convention in a spirit of cooperation with other delegations, but that it wished to make reservations regarding some of the instrument's provisions. In Iran's view, the "associated personnel" referred to in article 1 (b) fell outside the scope of application of the Convention. Similarly, the definition of a "United Nations operation" in article 1 (c) should include a reference to the consent of the State concerned. Iran also had reservations concerning article 5, since it felt that the provisions on the transit State fell outside the scope of application of the Convention. Lastly, with regard to article 15, on extradition, the principles of each State's national legislation must be observed, especially with regard to the jurisdiction referred to in article 10, paragraph 2 (b).

40. Ms. WILMSHURST (United Kingdom) said that it had been possible to negotiate and adopt the Convention on the Safety of United Nations and Associated Personnel expeditiously because of the urgency and seriousness of the problem of attacks against United Nations personnel, which for the most part went unpunished. The United Kingdom welcomed the Convention and obviously took the view that the primary responsibility for punishing the perpetrators of attacks against those personnel fell to the State in which the offence had been committed, and that the criminal law of that country should be applied - a principle that was reaffirmed in the Convention. On the other hand, that

State's obligation to prosecute or extradite the alleged offender was an important new element. After following the negotiations that had led to the adoption of the Convention, the United Kingdom wished to express its disagreement with certain concepts, for example, concerning jurisdiction over nationals abroad. Nevertheless, the Convention offered a guarantee for United Nations personnel participating in peace-keeping operations, in that the international community was prepared to take steps to prevent and punish attacks against those personnel and against personnel involved in high-risk operations in general.

41. Mr. MAIGA (Mali) said that, as Mali was one of the countries that provided contingents for peace-keeping operations, his delegation had joined in the adoption by consensus of the Convention. However, it had certain reservations regarding the text of the resolution, particularly with regard to the question of compensation, which, in its view, was not dealt with in the proper place in the text. His delegation also intended to express reservations concerning various provisions of article 10 when the time came for Mali to ratify the Convention.

AGENDA ITEM 138: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SEVENTH SESSION (continued) (A/C.6/49/L.11 and L.13)

42. The CHAIRMAN said that Iceland and India had joined the sponsors of draft resolution A/C.6/49/L.13.

AGENDA ITEM 140: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/C.6/49/L.12)

43. The CHAIRMAN said that Japan had joined the sponsors of draft resolution A/C.6/49/L.12.

The meeting rose at 12.20 p.m.